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ABSTRACT

This manual focuses on legal issues confronting schools in the area of substance abuse and provides practical policy guidance to public school managers in enforcing a substance abuse policy. After a brief introduction, section 2 examines barriers to action, commenting on several myths affecting drug abuse policy. Section 3 deals with substance abuse by school employees, addressing these topics: (1) establishing substance abuse policies; (2) testing employees for drug or alcohol use, commenting on types of testing and matters of privacy; (3) disciplining employees for the use of, impairment from, or possession of drugs or alcohol and citing pertinent laws and the Federal Rehabilitation Act; and (4) assisting employees with substance abuse problems. Section 4, on substance abuse by students, addresses these topics: (1) establishing a substance abuse policy for students; (2) prohibitions; (3) methods and procedures of enforcement, commenting on reasonable suspicion and reasonable scope of search; (4) due process requirements; (5) discipline; (6) voluntary drug testing; (7) mandatory testing of student athletes; and (8) the need for a reasoned and personalized approach. A drug and alcohol abuse policy checklist; 13 appendices containing sample policies, notices, and forms; and a glossary conclude the manual. (WTH)

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DRUG AND ALCOHOL ABUSE IN THE SCHOOLS

A Practical Policy Guide for Administrators and Teachers on How to Combat Drugs and Alcohol

by
John F. Lewis
Ronald J. James
Susan C. Hastings

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Table of Contents

DRUG AND ALCOHOL ABUSE IN THE SCHOOLS
A Practical Policy Guide for Administrators and Teachers on How to Combat Drugs and Alcohol

I. Introduction 1

II. Barriers to Action 1

III. Substance Abuse by School Employees 4
- A. Establishing Substance Abuse Policies 4
  - 1. Consultation with the Union 4
  - 2. Drug Policy Prohibitions/Procedures 5
  - 3. Publication and Dissemination 5
- B. Testing Employees for Drug or Alcohol Use or Impairment 6
  - 1. Common Types of Testing 6
  - 2. Constitutional Restrictions to Testing 7
    - a. Reasonable Expectation of Privacy 8
    - b. Reasonableness of the Invasion of Privacy 9
- C. Disciplining Employees for the Use of, Impairment from, or Possession of Drugs or Alcohol 10
  - 1. Federal Rehabilitation Act 11
  - 2. State Handicap Laws 11
  - 3. Other Civil Rights Laws 12
  - 4. Common Law Liability 12
- D. Assisting Employees with Substance Abuse Problems 13

IV. Substance Abuse by Students 13
- A. Establishing Substance Abuse Policies for Students 14
- B. Prohibitions 14
- C. Methods and Procedures of Enforcement 15
  - 1. Reasonable Suspicion 15
  - 2. Reasonable Scope of Search 16
    - a. Testing for Drugs 16
    - b. Locker and Desk Searches 18
    - c. Automobile Searches 18
    - d. Dog-Sniffs 18
    - e. Undercover Agents 19
- D. Due Process Requirements 19
- E. Discipline 19
- F. "Voluntary" Drug Testing 20

G. Mandatory Testing of Student Athletes 20
H. The Need for a Reasoned and Personalized Approach ... 22

Drug/Alcohol Abuse Policy Checklist 23

Appendices 24

Sample Policies, Notices, and Forms 24
Appendix 1 Staff Drug and Alcohol Abuse Policy 24
Appendix 2 Student Drug and Alcohol Abuse Policy 26
Appendix 3 Student Athlete Drug Screening Release 29
Appendix 4 Personal Searches of Students/Staff 31
Appendix 5 Locker and Desk Searches 31
Appendix 6 Automobile Searches 31
Appendix 7 Use of Dogs 32
Appendix 8 Bulletin Board Notice 32
Appendix 9 Sign Sample 33
Appendix 10 Guidelines to Employing Appropriate Methodologies 33
Appendix 11 Physician's Certification of Physical Fitness 34
Appendix 12 Consent Form for Pre-Employment Alcohol, Drug and Substance Screening 35
Appendix 13 Consent Form for Alcohol, Drug and Substance Testing 36

Glossary 37

I. Introduction

Drug and alcohol ("substance") abuse in America's schools is a problem that has received much deserved national attention and concern. Drug and alcohol use is widespread among American school children and employees. The United States has the highest rate of teenage drug use of any industrial society, e.g., sixty-one percent of high school seniors have tried drugs.[1] The economic and human costs of substance abuse to our schools in terms of health problems, absenteeism, negative physical effects, learning impairment, staff efficiency, and crime are staggering. Thirty-one percent of teenage cocaine users steal from their families, classmates or employers to support their habit.[2] At present, twenty percent (3.3 million) of fourteen- to seventeen-year-olds have serious drinking problems affecting school, dates, home.[3]

Schools have the right: (1) to ensure that employees and students report to school fit for duty, i.e., to teach and to learn, and (2) to ensure that employees and students remain fit for duty during the school day. Moreover, schools have the legal responsibility to provide a safe school environment.[4]

The implementation of formal drug policies/programs is absolutely essential for schools that are committed to addressing this health crisis and meeting their legal responsibilities. This manual will focus on the legal issues which confront schools on a daily basis in countless different ways, and it will provide practical policy guidance to public school managers: those who understand the importance of addressing the issues before it is too late.

II. Barriers to Action

The legal remedies to the problem of substance abuse in the schools require a balancing between the conflicting interests of the employee/student right to privacy and the responsibilities and rights of the school district/employer to maintain a drug-free learning and work environment. However, many of the major policy barriers to action are mythical:

Myth 1: Drug abuse is a trivial problem involving limited numbers of employees and students in declining urban areas.

Fact: Many teens are combining alcohol use with other drugs.

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1. United States Department of Education, Schools Without Drugs (1986).
2. Presentation at American Bar Association Seminar in cooperation with National Organization on Legal Problems of Education 32nd Annual Convention (November 19-22, 1986).
3. *Id.*
4. New Jersey v. T.L.O., 469 U.S. 325 (1985).

Seventy-five percent of senior high school students use alcohol and forty-four percent are using other psychoactive drugs. In 1985, one in twenty high school seniors was drinking alcohol daily. Thirty-seven percent of those seniors had four or more drinks each time they drank. One in six thirteen-year-olds has used marijuana.[5] The problem is clearly not limited to inner-city schools but infects all schools.

Substance abuse by school employees parallels that of the national population. The National Institute on Drug Abuse concluded that "drug abuse" is the most common health hazard in the American workplace." Nearly *two-thirds* of those individuals entering the workplace for the first time have used illegal drugs. Forty-four percent have used them within the last year and between ten percent and twenty-three percent of all workers abuse drugs on the job. Conservative estimates are that seven percent to eight percent of the work force abuses alcohol. There are about twelve million alcoholics in the work force. Alcohol remains the number one employee drug problem.[6] Substance abuse by school employees is also associated with crime and misconduct that disrupts the maintenance of orderly, safe schools and at times transforms our schools into marketplaces for dope deals stemming from employees and/or students using, purchasing, or selling drugs at school.

Myth 2: Drug testing is exceedingly inaccurate and therefore should not be used.

Fact: Screening techniques such as urine testing are nearly perfect, e.g., in the ninety-nine percent range,[7] when proper laboratory selection criteria is followed and when, as recommended by manufacturers, positive test results are confirmed by a second, more accurate (and more expensive) testing procedure prior to any suspension, discipline, or termination acton by the school.

Myth 3: Drug testing is not appropriate under any circumstances.

Fact: Drug testing does work as a screening device and is a useful tool if properly applied as part of an overall policy that is universally disseminated and consistently enforced. It should be remembered that it is not a solution but a tool. Random across-the-board drug testing should rarely be used, i.e., it is perhaps justifiable where a particular job raises concerns about safety, such as bus drivers, mechanics or driver education instructors. Selective testing may also be appropriate where there is some valid, legitimate documented reason such as reasonable suspicion or probable cause, i.e., supervisor-teacher observation or on

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5. United States Department of Education, *supra* note 1; ABA/NOLPE, *supra* note 2; The American Council for Drug Education, Fight Drug Abuse With Facts (1986).

6. *Alcohol and Drugs in the Workplace: Costs, Control and Controversies* (BNA) (1986); National Institute on Drug Abuse in the Workplace (1986).

7. National Institute on Drug Abuse, Urine Testing for Drugs of Abuse (1986).

the basis of a particular incident such as an accident, erratic behavior, or where there are other legitimate concerns such as security, in question. Supervisor-teacher observation is the oldest method of screening employee-student substance abuse and is still very effective with or without the use of drug screens.

Myth 4: Drug searches are always unwarranted intrusions into the privacy of employees or students.

Fact: Smart school administrators apply the principle of reasonableness to all searches. Where specific reasons for searches are developed in a drug policy that are consistently enforced and that (1) justify these searches, and (2) set forth due process procedures, the courts will probably uphold such searches.[8]

Myth 5: Drug testing is an unnecessary and unwarranted regulation of off-duty conduct and moreover authorities should focus solely on behavior: e.g., if the behavior is inappropriate the teacher or student should be disciplined without regard to the cause of the behavior.

Fact: The effects of marijuana are quite different from those of alcohol, which affects the physical processes. The active chemical in marijuana that causes intoxication is THC. The effects of THC tend to be much more subtle than alcohol and it does not leave the body as quickly. In addition, the physical manifestations are less apparent, e.g., less staggering, less slurred speech. What it does is to make one stupid and lazy, that is it decreases motivation and memory, a somewhat critical item for students and professionals such as teachers. It is a drug that creates the "careless" phenomenon. One recent study reported that impairment of the cognitive function may continue to be present long after the user is unaware of any of the effects, in some instances twenty-four hours or perhaps even more.[9] Drug testing therefore is necessary and should be used selectively as a tool (not as the dispositive decision-maker). Moreover, testing adds a scientific dimension to the teacher-supervisor observation about the fitness for duty of the student/employer.

Opponents of drug screening argue that drug testing is an effort to regulate off-duty conduct and is analagous to the court-imposed precedents that employers should not attempt to regulate the off-duty sexual conduct of employees and/or students. However, a key distinction is that sexual conduct does not generally keep any employee/student from reporting to work/school fit to teach/learn, whereas off-duty drug

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8. T.L.O., 469 U.S. 325 (1985).

9. National Institute on Drug Abuse, *supra* note 7; Chait, *Hangover Effects the Morning After Marijuana Smoking*, 15 Drug Alcohol Depend. 229 (1985); Yesavage, *Carryover Effects of Marijuana Intoxication on Aircraft Pilot Performance: A Preliminary Report*, 142 Am. J. Psychiatry 11 (Nov. 1985).

and alcohol abuse could, and at times does, render an employee/student unfit to work, teach or learn.

III. Substance Abuse by School Employees

Substance abuse problems confronting a board of education for employees and students differ. The substance abuse problems of school employees will be addressed first, followed by the substance abuse problems of students.

A. Establishing Substance Abuse Policies

School boards should adopt a policy which (1) expressly prohibits the use or possession of drugs and alcohol on school premises and (2) further prohibits any use of drugs or alcohol which would impair an employee's performance during school hours. In addition, the board's policy should address the following issues: (1) Under what circumstances, if at all, will the board test its employees to determine whether one or more employee(s) is abusing drugs and alcohol? (2) What categories of employees will be tested and for what reasons? (3) What disciplinary actions will the board take in the event an employee is abusing drugs and alcohol? (4) Should the board address the problem through a rehabilitation program? (5) Should the board address the problem through a combined approach of discipline and rehabilitation?

1. Consultation with the Union

In adopting a substance abuse policy, a threshold issue is whether the policy may be unilaterally implemented without the approval of the employees or the employees' representative. In short, what kind of cooperation, if any, do you need to have from the union prior to implementation of an employee drug abuse policy? Such a policy may represent a "term or condition of employment" which needs to be addressed through collective bargaining.

Whether or not the board has a legal obligation to engage in collective bargaining prior to implementing a policy, the board must be able to "sell" the policy to its employees and students through drug education. *Support of drug policies by the non-abusers in the workforce is critical to its success.* The focus of drug education is to enable the non-user employee to comprehend the budget and safety costs of working in a drug-abusing environment and to alert students to the personal detrimental health effects of drug abuse. Once employees and students or parents appreciate the consequences of working with drug abusers or

trying to learn in a drug dominated environment they will want and support a drug-free school system. Therefore, even where there is a strong management rights clause in the collective bargaining agreement and there is no legal obligation to consult or negotiate, consulting with the union, employee association, student council and parent-community groups is still an excellent strategy for successfully implementing a substance abuse policy.

2. Drug Policy Prohibitions/Procedures

A policy prohibiting the use, sale, or possession of drugs or alcohol should clearly set forth the prohibited conduct and the disciplinary measures which the board may impose. The terms used in the policy should be defined in plain, unmistakable English. (What is a "drug"? What is "substance abuse"?) (See Appendix I, Staff Substance Abuse Policy.) Prohibited conduct should include the use, sale or possession of alcohol, drugs or drug paraphernalia during school hours[10] or on school property. Prohibited conduct should also include any physical or mental impairment during school hours due to drug or alcohol use either before or during work. The permissible disciplinary measures which the board may take, such as oral or written reprimand, transfer in assignment, suspension or termination, must also be specifically stated in the policy. Additionally, the policy should make it clear that school property (including desks and lockers) is subject to search by school officials without regard to suspicion of wrongdoing.

The policy will need to contain the procedures for enforcing its prohibitions. Unlike the private sector, for example an independent school, a public school is subject to the strictures of the fourth amendment. This means that testing and search procedures used to enforce the policy must be related to job performance and must be based on some "reasonable suspicion" that a violation of the policy has occurred.[11] The policy should contain review procedures by which an employee may appeal a finding of a violation.

3. Publication and Dissemination

Once the substance abuse policy has been adopted, it should be

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10. "School hours" should be defined to include any time and place an employee is on duty, or his or her conduct is likely to impact the employee's ability to carry out his or her duties.

11. In Patchogue-Medford Congress of Teachers v. Board of Educ. of Patchogue-Medford Union Forge School Dist., 505 N.Y.S.2d 888 (N.Y. App. Div. 1986), the court of appeals affirmed that mandatory testing of probationary teachers, constitutes a search within the meaning of the fourth amendment and, absent reasonable suspicion that a teacher is, or has ever been, a drug user, is unconstitutional.

published and distributed to all employees. It is a sound idea to accompany the distribution with an oral presentation indicating the nature of the national problem and the board's belief that this is the best way for the district to address the problem. The policy should also be mentioned on all employment applications and contracts. It may be necessary to include the policy in the collective bargaining agreement, thereby subjecting it to the applicable grievance procedures. Substance abuse is a particularly sensitive issue and the adoption of a policy related thereto should be done thoughtfully and with a cooperative labor-management effort. The means for inclusion should be discussed with the board's legal counsel; it may be necessary to have a vote of the bargaining unit members before the policy can become effective.

B. Testing Employees for Drug or Alcohol Use or Impairment

1. Common Types of Testing

There are two issues which should be initially considered when testing or searching employees to determine if they are abusing, or in possession of, drugs or alcohol at school. First, and of primary importance, is the issue of whether the use or possession of or impairment by alcohol or drugs violates (1) the collective bargaining agreement or employment contract; (3) board policies; or (3) state or federal law.

Secondly, it must be determined whether the collective bargaining agreement authorizes the board to test or search an employee for drug or alcohol use or possession. If the agreement provides for testing or personal searches, some of the legal impediments discussed below may be resolved.

A widely used method of determining whether an employee is using, or impaired by, drugs or alcohol is through testing procedures. Most commonly this will be by a urinalysis for the detection of drugs and by a breathalyzer for the detection of alcohol. A urinalysis can be completed by the appropriate school administrator or school nurse through the use of an EMIT kit[12] or by an independent laboratory. Likewise, sampling for a urinalysis can be supervised either by a technician from the laboratory or by a trained school administrator or school nurse. A breathalyzer test may also be performed at the school or at an independent laboratory.

It is beyond the scope of this manual to discuss the procedures for different types of testing, but it is worth noting that the validity of drug

12. "EMIT" is the acronym for Enzyme Multiplied Immunoassay Technique.

testing is highly dependent on the procedures used. Samples must be accurately collected and marked, the chain of custody must be well documented, and any positive results should be confirmed using a different, more precise (and more costly) testing procedure.[13] Because the validity of the test is such a crucial issue, it is recommended that the board employ the services of a competent independent laboratory to supervise the testing. (See Appendix 10, Guidelines to Employing Appropriate Methodologies.)

The results of testing procedures for drugs and those for alcohol have one very significant difference. Alcohol test results indicate the degree of impairment, whereas drug test results merely indicate the presence or absence of drugs in the body. The degree of impairment, as well as the time and manner in which the drugs were taken, are not usually apparent from urinalysis results.[14]

2. *Constitutional Restrictions to Testing*

The most important issue presented when public school administrators test or search employees for drug or alcohol use or possession is the extent of the fourth amendment's prohibition of unreasonable searches and seizures.[15] The fourth amendment applies to public school districts[16] through the due process clause of the fourteenth amendment.[17] The latter cloaks all with protection from any state action in violation of the

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13. In Jones v. McKenzie, 628 F. Supp. 1500, 1506-07 (D.D.C. 1986), the court held that a discharge based on an EMIT was "arbitrary and capricious," where the employer did not confirm the EMIT findings by an alternate method such as a radioimmunoassay or a gas chromotography-mass spectrometry.

14. It is significant that a urinalysis does not indicate impairment, for if a urinalysis result was the sole reason for disciplining an employee, the discipline could be due to the employee's alcohol consumption or drug use off the job which arguably did not affect the employee's job performance.

In addition, there is scientific evidence that, depending on the sensitivity of the test, ingestion of matters such as poppy seed coffee cake may cause a positive result on a urinalysis. Therefore, the cut-off for positive tests should be at a level high enough to further reduce the risk of false positives. Law, *Passive Inhalation of Cannabis Smoke*, 36 J. Pharm. & Pharmacol. 578 (1984); Morland, *Cannabinoids in Blood and Urine After Passive Inhalation of Marijuana Smoke*, 7 J. Anal. Toxicol. 174 (1983).

15. The fourth amendment provides:

> *The right of the people to be secure in their persons*, houses, papers, and effects, *against unreasonable searches and seizures, shall not be violated*, and no Warrants shall issue, but upon *probable cause*, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Emphasis added)

16. New Jersey v. T.L.O., 469 U.S. 325 (1985).

17. "[N]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of laws . . . ."

Constitution including, of course, a violation of the fourth amendment.[18]

a. Reasonable Expectation of Privacy

Although the extent of the fourth amendment's prohibition against drug or alcohol testing is largely unsettled, certain basic principles apply. First, the fourth amendment protection does not apply unless a person has a reasonable expectation of privacy in the thing searched.[19] Thus, if there is no violation of the employee's reasonable expectation of privacy, no constitutional violation has occurred. For example, a public school employee does not have a reasonable expectation of privacy in the contents of a locker or desk where the locker or desk is the property of the school, is located on school property, is properly marked as school property, and where the employee has been forewarned that the locker or desk may be searched. Because the employee in that instance would not have a reasonable expectation of privacy, the fourth amendment would not bar the board from searching the locker or desk.[20]

Also, if the employees have agreed to some type of testing or personal search in a collective bargaining agreement, they could be deemed to have waived any reasonable expectation of privacy.[21] Likewise, if an employee signs a written consent to submit to testing, any reasonable expectation of privacy would be waived.[22]

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18. There is a clear distinction between the "reasonable suspicion" standard that applies to searches conducted by school officials for suspected violations of school policy and the more stringent "probable cause" standard that applies to searches conducted by the police for the purpose of ferreting out criminal evidence. Where the school officials enlist the assistance of law enforcement officials and the fruits of the school search are used in a criminal prosecution, some courts are unwilling to validate the search without a showing of probable cause. Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976).

19. Katz v. United States, 389 U.S. 347 (1967); Smith v. Maryland, 442 U.S. 735 (1979).

20. In one case, a postal employee's locker was not protected by the fourth amendment when a government regulation authorized searches of employees' lockers. United States v. Bunkers, 521 F.2d 1217 (9th Cir. 1975), *cert. denied*, 423 U.S. 989 (1975). Similarly, a warrantless search of a United States Mint employee's locker was upheld where a government regulation provided that Mint lockers were not private and the search was undertaken by the employer to recover government property. United States v. Donato, 269 F. Supp. 921, *aff'd*, 379 F.2d 288 (3rd Cir. 1967). *But see* Gillard v. Schmidt, 579 F.2d 825 (3rd Cir. 1978) (where the court held that a guidance counselor, charged with maintaining sensitive student records, had a reasonable expectation of privacy, in the absence of an accepted practice or regulation which indicated that the employer would search the desks and offices of employees); United States v. Speights, 557 F.2d 362 (3rd Cir. 1977) (where the court held that a policeman had a reasonable expectation of privacy in his private locker in a police station when there was no regulation or police practice to alert the officer to expect a locker search).

21. The question of whether employees through a union may effectively waive fourth amendment protections in this manner has not been addressed by the courts. Because of this the board should consider consulting with legal counsel before embarking on a personal search, even where authorized by a collective bargaining agreement.

22. Any such written consent by employees must be voluntary, i.e., not given under duress or threats of dismissal.

Generally, persons have a reasonable expectation of privacy in their body fluids.[23] It is clear, however, that the reasonableness of an expectation of privacy is dictated not only by the thing searched but also by the context in which the expectation of privacy is asserted. If there is a great public interest involved, a person's expectation of privacy may be outweighed by societal interests and therefore any expectation of privacy would not be reasonable under a fourth amendment analysis. Accordingly, a court has indicated that city bus drivers have no reasonable expectation of privacy in body fluids because of the public safety interests involved.[24] Conversely, absent reasonable suspicion, teachers appear to retain such a reasonable expectation of privacy.[25]

b. Reasonableness of the Invasion of Privacy

If the employee does have a reasonable expectation of privacy in his body fluids, such privacy may only be invaded in a *reasonable* manner, i.e., if there is a reasonable suspicion that the employee's body fluids will indicate that he or she is using drugs or alcohol in violation of the policy or in a manner which impairs the employee's ability to perform his or her job. However, in some instances random testing of employees may be permitted. One court has recently held that: "[U]rinalysis [of prison employees] may be performed uniformly or by systematic random selection of those employees who have regular contact with the prisoners on a day-to-day basis in medium or maximum security prisons."[26] However, the court cautioned that testing of employees other than "those employees so designated, may be [done] only on the basis of reasonable suspicion."[27]

Relating the above legal principles to public school employees, the easiest burden to overcome would be the testing of bus drivers who are responsible for the transportation of students. These drivers or other persons employed in positions where safety is a paramount concern (e.g., bus mechanics and driver education instructors) may not be able to show a "reasonable expectation of privacy". Thus, a post-accident testing program which tests any driver involved in an accident and/or who is suspected of impairment or violation of a work rule (fitness for

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23. Schmerber v. California, 384 U.S. 757 (1966) (reasonable expectation of privacy in blood); Rochin v. California, 342 U.S. 165 (1952) (reasonable expectation of privacy in stomach contents); McDonell v. Hunter, Slip op. No. 85-1919 (8th Cir. 1987) (urinalysis is a search and seizure within the meaning of the fourth amendment.)

24. Division 241 Amalgamated Transit Union v. Suscy, 538 F.2d 1264 (7th Cir. 1976), *cert. denied*, 429 U.S. 1029 (1976).

25. *Patchogue-Medford Congress of Teachers*, 505 N.Y.S.2d 888, supra, note 11 at n.2.

26. McDonell v. Hunter, Slip op. No. 85-1919 (8th Cir. 1987).

27. *Id.*

duty-behavior observation) would be constitutionally proper.[28] In addition, pre-employment return to work and/or annual physicals which include urine tests would also be an appropriate policy.

Aside from bus drivers and other employees in "public safety" positions, other employees should be subject to testing only under a "reasonable suspicion" standard unless either their job duties or responsibilities involve areas of public safety or security which outweigh any expectation of privacy the employees may have, or the employees have relinquished their expectation of privacy in a collective bargaining agreement. Otherwise, it is clear that a school board may not demand that an employee be tested without a reasonable suspicion that the employee is either impaired by drugs or alcohol or in violation of the board's policies.[29]

C. Disciplining Employees for the Use of, Impairment from, or Possession of Drugs or Alcohol

Again, an initial concern is whether the use or possession of, or the impairment from drugs or alcohol is prohibited by board policies or employment agreements. If it is not, good judgment dictates that such a policy be adopted promptly.

Moreover, before instituting disciplinary action against an employee for the use or possession of, or the impairment from, drugs or alcohol, a determination must be made concerning whether the employee's use of drugs or alcohol has rendered that employee an "alcoholic" or a "drug addict".[30] For example, in the case of a teacher, look to see whether the teacher's condition has adversely impacted the teacher's ability to teach. If the employee is an alcoholic or drug addict, the board must then determine whether the employee's *current* use of drugs or alcohol renders the employee unqualified for the job.[31]

Additionally, any discipline must be applied in a non-discriminatory manner. The board should consider whether the enforcement of the drug and alcohol policy will have a disparate impact on any class

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28. *Suscy*, 538 F.2d 1264, supra, note 24.

29. *Patchogue-Medford Congress of Teachers*, 505 N.Y.S.2d 888, *supra* note 11.

30. The terms "alcoholic" and "drug addict", as used in the federal Rehabilitation Act of 1973, refer to persons whose use of drugs or alcohol has resulted in (i) a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) a record of such impairment, (iii) or being regarded as having such an impairment. 29 U.S.C. § 706(B).

31. Protection under the Act is not afforded to persons whose current use of alcohol or drugs prevents the performance of the job or duties, or which represents a direct threat to the property or safety of others. 29 U.S.C. § 706(B).

protected by title VII of the Civil Rights Act of 1964 or any applicable state civil rights act.[32]

1. Federal Rehabilitation Act

The Federal Rehabilitation Act of 1973[33] prohibits discrimination against handicapped individuals (including drug addicts and alcoholics). As previously discussed, a drug addict or an alcoholic is not a "handicapped individual" under the Act if the person's *current use* of drugs or alcohol "prevents him from performing the duties of the job in question or whose employment, by reason of such current drug or alcohol abuse, would constitute a direct threat to property or the safety of others."[34] Any employer, including public school districts, receiving federal financial assistance is covered by the Act's prohibitions. Any person employed by such an employer has the right to institute a private cause of action where that employee feels he/she has been discriminated against on the basis of alcoholism or drug dependency.[35] The Act also requires an employer to "reasonably accommodate" its employees who are drug addicts or alcoholics, absent undue administrative or financial burden. Such accommodation may take the form of job restructuring, part-time or modified work schedules, permitting employees to undergo therapy, directing the taking of rest periods or leaves of absence for extended medical treatment, or reducing stress levels.

2. State Handicap Laws

Currently, thirty-eight states have laws which, like the Federal Rehabilitation Act, prohibit discrimination against handicapped individuals. It is largely undecided what the scope of these laws is with respect to drug addicts and alcoholics. However, it is likely that they will be interpreted in a manner similar to the interpretation of the federal Act.[36]

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32. In an action filed in federal court in Cleveland, The Shield Club v. City of Cleveland, No. C72-1088, No. C77-346 (N.D. Ohio filed 1986), a group of police cadets who were tested positive for marijuana use have contested the validity of the urinalysis test used. In an affidavit filed with the court, it is contended that the urinalysis test is racially biased.

33. 29 U.S.C. § 701 (1973).

34. 29 U.S.C. § 706(B) (1973).

35. 29 U.S.C. § 794 (1973) provides, in pertinent part: "No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."

36. In Hazlett v. Martin Chevrolet, Inc., 25 Ohio St. 3d 279 (1986), the Ohio Supreme Court held that drug addiction and alcoholism are handicaps within the meaning of the state handicap discrimination law. *Accord* Consolidated Freightways, Inc. v. Cedar Rapids Civil Rights Comm., 366 N.W.2d 522 (Iowa 1985); Squires v. Labor & Industry Review Comm., 294 N.W.2d 48 (Wis. 1980).

3. Other Civil Rights Laws

Title VII of the Civil Rights Act of 1964, as well as civil rights acts in the majority of the states, protects against racial discrimination. Such protection includes prohibiting employer rules or practices which have a "disparate impact" on a protected class. Therefore, if it can be shown that a drug or alcohol testing or search policy proportionately results in more disciplinary or adverse job actions to members of a protected class, a *prima facie* discrimination action can be made out. A *prima facie* case may be rebutted with evidence that the policy complained of is job-related and/or based on business necessity, e.g. necessary for the satisfactory performance of the job in question.[37]

4. Common Law Liability

While the possibility of liability for defamation, invasion of privacy, infliction of emotional distress, or wrongful discharge exists, the thoughtful exercise of sound judgment will avoid most problems. Care must be exercised to secure reliable test results. In addition, a school may have secured test results under constitutionally permissible standards but still sustain damages for the negligent/careless manner in which the test results were disseminated, reported or handled.[38]

In one case, an employee was discharged after a physical examination revealed a trace of methadone in the employee's urine. After denying that he had ever used methadone or heroin, the employee independently had another analysis of his urine conducted which indicated that a compound very similar to methadone was present but methadone was not present. The employee was discharged *despite the evidence*, and was subsequently awarded $200,000 in a defamation action against his employer.[39]

The torts of invasion of privacy and infliction of emotional distress are based on the *manner* in which an employer tests an employee for drug or alcohol use. If legitimate workplace problems with drug or alcohol use exist, or if objective facts lead to a reasonable suspicion of drug or alcohol use, testing should not lead to a cause of action for invasion of privacy or infliction of emotional distress if done in a reasonable manner. However, if the test is done at random for improper motives, an invasion of privacy resulting in emotional distress may be found.[40]

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37. New York City Transit Authority v. Beazer, 440 U.S. 568 (1979).
38. *See Jones v. McKenzie*, supra, note 13.
39. Houston Belt & Terminal Railway Co. v. Wherry, 548 S.W.2d 743 (Tex. Civ. App. 1977).
40. O'Brien v. Papa Gino's of America, Inc., 780 F.2d 1067 (1st Cir. 1986).

An action for wrongful discharge may be available to an employee who is discharged for refusing to comply with the testing requirements of a drug or alcohol policy, if such a discharge is found to breach an implied covenant of good faith and fair dealing between the employer and the employee.[41] Also, a cause of action for wrongful discharge will lie if any written or oral assertions from the employer were relied upon to the employee's detriment which were breached by the employee's termination.

D. Assisting Employees with Substance Abuse Problems

In addition to the procedures described above, a rehabilitation component can provide an integral component in a drug abuse policy. Such plans, commonly referred to as Employee Assistance Programs (EAP's) are designed to educate and rehabilitate an employee who is a substance abuser. They have been widely used in private industry, and have been credited with saving employers significant expense in health care, absenteeism and productivity, as well as being responsible in improving employee morale. EAP's should focus on early, non-disciplinary intervention of substance abuse problems through voluntary participation by employees. The well rounded EAP consists of counseling, education, and medical assistance program(s).

In order to be effective, EAP's must be presented in a manner by which the employees feel that the board is truly concerned about his well being. Union or employee participation in planning and implementing EAP's is therefore essential. Also, it must be understood by the employees that *voluntary* participation with EAP's will be treated with confidentiality and will not lead to disciplinary or retaliatory action by the board.

IV. Substance Abuse by Students

The preceding section discussed the various concerns raised when school employees abuse drugs or alcohol. Similar concerns are raised with respect to substance abuse by students. The presence of drugs and

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41 In California state court, an action has been filed by an employee who was discharged after having refused to take a random urinalysis. She has sued her former employer for wrongful discharge and invasion of privacy. Luck v. Southern Pacific Transportation Co., no. C84-3-230 (Cal. Super. Ct. filed S.F. County 1986).

The *Luck* action reveals another fear of employees subject to drug urinalysis tests – the use of the employee's urine for purposes of determining other medical conditions. Ms. Luck was three months pregnant when she was fired and had not yet informed her employer due to her fear of how the news would affect her career.

alcohol in the schools threatens the student's physical, emotional, social, and academic well-being.

Public school districts have an obligation to carefully monitor, supervise, and discipline their students in order to create a safe and productive school environment, both for the student abuser and for his colleagues. In order to effectively address these concerns, public school boards should implement a substance abuse policy that extends not only to school employees but also to students.

A. Establishing Substance Abuse Policies for Students

A substance abuse policy should contain express prohibitions, clearly setting forth the intended scope of the policy. In developing a policy, the goal of the school district should not be a broad crusade to stamp out society's substance abuse problem. Instead, the district should tailor the scope and intent of its substance abuse policy to effectively address those problems which are particular to that district.

Accordingly, the school district must first assess the scope of the district's substance abuse problem. Is drug and alcohol abuse widespread? Is there a problem with peddling on or near the school premises? Is the problem limited to smoking cigarettes in the bathroom? Are weekend beer "keggers" a common occurrence? The scope of the district's substance abuse policy should reflect the scope of the district's problem.

The policy should also contain specific methods and procedures of enforcement. Additionally, the policy must clearly explain the disciplinary and review procedures which will be implemented by the board.[42]

B. Prohibitions

The policy should describe in clear, concise terms the prohibited conduct. It should address not only the use and possession of drugs or alcohol on the school premises, but should also prohibit any use of drugs or alcohol off the school premises which would impair the students' mental or physical abilities during the school day. Likewise, the policy should require that students using prescription drugs advise the school nurse as to the type and quantity of drug and the name of the prescribing physician.

If the district intends to prohibit the use of tobacco during school, or

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42. See sample Student Substance Abuse Policy in Appendix 2 and 3.

include the use of tobacco in its definition of "substance," or define it as a separate offense, the policy should so state.

C. Methods and Procedures of Enforcement

When implementing a substance abuse policy, the school district must take into consideration not only its obligation to provide a safe academic environment but also the student's privacy interests and right to due process of law.

The United States Supreme Court has held that students have certain privacy interests that are protected by the prohibitions contained in the fourth amendment.[43] In so doing, the Court recognized that, while a student has some privacy interests in the school setting, those rights cannot impede upon the schools' ability to maintain an orderly and safe educational environment.

The balance between the school's interest in providing a safe academic environment and protecting a student's privacy interest calls for a "reasonableness standard," said the Court. In order to satisfy this reasonableness standard, the school authorities must have (1) a reasonable suspicion that the student has violated a law or policy of the school and that a search will provide relevant evidence of the violation, and (2) the search must be reasonable in its scope, in that it is not excessively intrusive in light of the age or sex of the student or the nature of the infraction.[44]

1. Reasonable Suspicion

Reasonable suspicion means more than "mere" suspicion. The school authorities must apply an objective test in determining whether reasonable suspicion exists. The basis for reasonable suspicion could include (1) eyewitness testimony; (2) a student's past record or reputation for use or possession of drugs and alcohol; (3) information obtained through an informant or through reliable statements which incriminate the student; and (4) any other independent evidence which gives rise to a reasonable conclusion that the student has engaged in a violation of the policy. While the above factors, standing alone, may not always suffice in supporting a reasonable suspicion of substance abuse (e.g., a student's association with persons reputed to abuse drugs), a combination of these factors will strengthen the school's position of "reasonable suspicion."

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43. New Jersey v. T.L.O., 469 U.S. 325 (1985).
44. *Id.*

2. *Reasonable Scope of Search*

A personal search of a student must be reasonably related to the objectives of the search and must be the *least intrusive* means of maintaining order and safety in the school. A personal search includes a pat-down or frisk; a search of a student's personal belongings (i.e., a purse); a strip search; blood or urine screening; and the use of dogs to "sniff-out" drugs located on a student.

As a general principle, personal searches should not be the initial means of determining whether a student is in violation of the substance abuse policy. Instead, personal searches should be used as a last resort—as tools upon which to fall back when less intrusive means are not effective. *The intrusiveness of the search must be reasonably related to the suspected violation.* For example, a strip search or a drug screening of a thirteen-year-old student found smoking a cigarette in the restroom, without more, would be unreasonable in light of the age of the student and the nature of the infraction.

Of course, once the school has obtained sufficient evidence to discipline a student, there is really no need to continue with further searches. This, of course, begs the question, and it will always be a matter of judgment for the administrator. For example, if school authorities have reasonable suspicion that a student has violated the substance abuse policy, and drugs are found in that student's locker, there might be no further need for a personal search of that student or to require that the student undergo drug testing. If the drugs found in the student's locker provide sufficient evidence to discipline the student, any further search would be considered excessively intrusive.[45]

a. Testing for Drugs

While a number of school districts are implementing substance abuse policies which include screening students for drugs or alcohol,[46] such testing raises a number of legal questions which school districts cannot afford to ignore.

To date, there are two court cases which address the issue of drug testing of students. In the first case, a board of education implemented a policy requiring urine samples from *all students* for the purpose of

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45 Anable v. Ford, No. 84-6033, Slip op. (W.D. Ark. 1985).

46 *Long Beach Panel Backs Drug Testing for Student Activities*, Los Angeles Times, Sept. 25, 1986; *Drug Testing: High Schools Inaugurate Voluntary Programs to Give Athletes a Reason to Say 'No'—and Set and Example*, Los Angeles Times, Sept. 26, 1986; *Amidst Efforts to Curb Drugs, Fears of Overreaction*, The Christian Science Monitor, Oct. 10, 1986; *Schools May Test for Drugs*, The New York Times, Sept. 21, 1986.

screening for drug use. Absent clear factual or policy justification, the court found that the school board's policy of mandatory across-the-board drug testing violated the students' right to be free from unreasonable searches and seizure under the fourth amendment, the students' rights to due process, and the students' legitimate expectation of privacy and personal security.[47]

In the second case, school authorities had reasonable suspicion to believe that a student had been smoking marijuana in the restroom. In accordance with school policy, the student was requested to undergo a urinalysis to test for the presence of marijuana. This test was given three days after the student was accused of violating the school's substance abuse policy. The court found that the urinalysis was an overly intrusive search because the test could not document when the drug was ingested, nor would it show whether or not the person was under the influence of the drug while at school.[48] Because the test could not show whether in fact the student used drugs during school hours or was under the influence of drugs during school hours, the court stated that the school was, in effect, attempting to regulate out-of-school conduct.

The court further stated that any such test would require a high probability that the test would disclose evidence of a violation of the school's substance abuse policy. Assuming the school authorities would have had evidence giving rise to a high probability that the student violated the school policies, the court stated the testing was unnecessary because there would already have been sufficient evidence to justify the imposition of sanctions.[49]

In light of the fact that the legal status of testing students for drugs is at best questionable, a public school district should restrict testing to only those situations in which there is a high probability that the student is under the influence of drugs or alcohol and there is no other concrete evidence which would support disciplining the student. For example, if a student's behavior is such that a reasonable person would conclude that student is under the influence of drugs or alcohol, and yet a search of the student and the student's locker uncovers no evidence of drugs or alcohol, the school may have grounds to test the student to further substantiate disciplinary measures. However, if the school has obtained enough evidence to justify imposing sanctions on the student, then testing would be unnecessary and overly intrusive.

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47. Odenheim v. Carlstadt-East Rutherford Regional School Dist. No. C—4305-85E, Slip. op. (N.J. Super. Ct. Bergen County 1985).

48. Because marijuana remains in a person's system for a period of time, a urinalysis may produce positive results up to two months after the person last ingested the marijuana. *See* National Institute on Drug Abuse, Urine Testing for Drugs of Abuse (1986).

49. Anable v. Ford, No. 84-6033, Slip op. (W.D. Ark. 1985).

b. Locker and Desk Searches

Because students' lockers and desks are school property and remain under the control of the school, students have a reduced expectation of privacy. The student's expectation of privacy can be entirely defeated by a school policy which expressly states that the school retains ultimate control over student lockers and reserves the right to inspect lockers at any time without notice and without student consent.

Alternatively, the school may want to obtain "consent-to-search" statements from students, whereby the students expressly waive any privacy interest they may have in their lockers.

c. Automobile Searches

The fourth amendment prohibits a general search of a student's vehicle, absent the student's consent or a reasonable suspicion the car contains prohibited substances. However, it is lawful for school officials to patrol school parking lots and to look into a student's car without the student's consent or a showing of reasonable cause. If the school officials observe an item which would create a reasonable inference that the student is violating school policy, the officials may search the inside of the car. In order to retain greater control over automobile searches, the school district could implement a policy expressly reserving the right to search vehicles parked on school property, with or without reasonable suspicion of a violation of the substance abuse policy has occurred, by conditioning the student's privilege of parking on school property on the student's consent to a search. (See Sample Bulletin Board Notice which could also cover employees, vendors, contractors or visitors at Appendix 8).

d. Dog-Sniffs

The use of dogs to detect drugs on a student falls within the category of a personal search. Consequently, this means of ferreting out substance abuse is considered intrusive and should be used only as a last resort.[50]

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50. Not only are dog-sniffs overly intrusive, the use of dogs can be very traumatic, especially to younger students. Also consider using cocker spaniels rather than Doberman pinschers or German shepherds. *But see* Zamora v. Pomeroy, 639 F.2d 662 (10th Cir. 1981) (warrantless locker search of student upheld when police dog indicated presence of marijuana inside student's locker); Horton v. Goose Creek Indep. School Dist., 690 F.2d 470, 477 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983) (sniffing by trained dogs of student lockers in public hallways and automobiles parked on public parking lots to detect drugs as part of a canine contraband detection program did not constitute a search of a person as defined by the fourth amendment).

c. Undercover Agents

A school's use of an undercover agent to enforce its substance abuse policy will be subject to close scrutiny by the courts, if challenged, and should be used only as a weapon of last resort. There is an assumption that undercover agents have a vested interest in "catching" violators. This underlying bias may taint the effectiveness of the agent. Similarly, the use of an undercover agent may lead to claims of entrapment, further undermining the effectiveness of this means of enforcement.[51]

D. Due Process Requirements

Any substance abuse policy should contain review procedures whereby the student and/or parent or guardian could contest a charge that he or she violated the policy. The review procedures should include an initial informal hearing with the school administrators followed by an opportunity for a formal appeal to the board of education.

The policy should provide for (1) a reasonable time and date for the hearing(s); (2) notice of the hearings; (3) the charges to be stated in clear, concise terms; (4) the opportunity to offer evidence and cross-examine witnesses; and (5) the right to have an attorney present at the hearings.

E. Discipline

While there are circumstances where a school board's immediate suspension of a student is appropriate because he/she has violated its substance abuse policy, normally the course to follow will be implementation of "progressive" discipline, combining rehabilitation with the suspension of certain privileges. The disciplinary procedures should be tailored to the type of infraction and whether it was the student's first offense. For example, a student who is caught smoking a cigarette on the school premises might be required, for a first offense, to attend a smoking clinic and refrain from any extracurricular activities for one week. A student caught drinking alcohol or using drugs might be required, for a first offense, to attend a health class/seminar and refrain from participating in extracurricular activities for the remainder of the quarter or semester. A second or third offense would result in progressively harsher consequences.

Regardless of the degree or method of discipline that is implemented, the policy should state, in clear and concise terms, the consequences resulting from a violation of the policy.

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51 U.S. Borax & Chemical Corp., 84 Lab. Arb. (BHA) 32 (1984); A.R.A. Mfg. Co., 83 Lab. Arb. (BNA) 580 (1984).

F. "Voluntary" Drug Testing

Public school districts across the country are implementing substance abuse policies which entail some sort of "voluntary" testing of selected groups of students. Most of these policies are directed at students who participate in extracurricular activities, such as athletics, band, or drama.

One such policy requires that any student who wishes to participate in extracurricular activities must submit to a drug screening test. The rationale behind such a policy is that (1) participation in extracurricular activities is merely a "privilege," as opposed to a right, and (2) by opting to participate, the student has consented to the drug testing, thereby waiving his or her fourth amendment rights. The legality of this type of policy is uncertain. While there are no reported cases to date which address this so-called "voluntary" drug testing, opponents may be expected to argue that (1) participation in extracurricular activities is more than a mere privilege, and (2) participation is not tantamount to consent.

A second type of "voluntary" policy involves random drug testing of students who volunteer to be placed in a drug testing "pool." While random testing of "volunteers" may not assist the school in detecting violators, it gives the students a reason to remain drug free. The rationale behind this type of policy should not be overlooked: it gives the student an "acceptable" excuse to say "no" to drugs.

Assuming the students that constitute the testing pool are truly volunteers and were not coerced or pressured into the program by school administrators or faculty, this type of voluntary drug-testing program should pass legal muster.

G. Mandatory Testing of Student Athletes

Substance abuse by student athletes raises certain safety-related concerns that can be distinguished from substance abuse by other students. Student athletes who abuse alcohol or drugs and who participate in rigorous, physically demanding sports are likely to be more vulnerable to the dangers inherent in substance abuse. Moreover, a student athlete who is "high" on drugs or alcohol poses a real threat to the safety of other participants. In light of these concerns, a school district arguably has a legal obligation to implement any measures necessary to ensure the safety of its student athletes, including the screening of student athletes for drugs and alcohol.

Recently, the Supreme Court reaffirmed its position taken in *T.L.O.*, stating that a school has a certain amount of flexibility in sustaining its obligation to provide a safe environment for its students.[52] The Court further recognizes that "[t]he maintenance of discipline in the schools requires not only that students be restrained from assaulting one another, abusing drugs and alcohol, and committing other crimes but also that students conform themselves to the standards of conduct prescribed by school authorities."[53]

In an attempt to eliminate drug and alcohol use by school athletes and to ensure the safety of the student participants, some schools and colleges have implemented a mandatory drug screening program, using urinalysis to determine whether a student is abusing drugs. The underlying rationale of the mandatory drug-screening is not, and should not be, to discover "violators" of a substance abuse policy. Instead, its purpose is, and should be, to promote a safe environment for the athletes by eliminating potential drug-related injuries. Because the drug screening is not being used as a tool to enforce a substance abuse policy, school officials need not satisfy the "reasonable suspicion" standard.

In order to justify mandatory drug screening of student athletes on the basis of student fitness and safety, the school officials should not, without more, use the results of the drug test to discipline the student. Remember: it is because the real purpose is safety that the district is not held to the "reasonable suspicion" standard. For that reason, the district's response should be confined to limiting the student's participation in sports. If the school attempts to discipline the student for violation of a substance abuse policy, the mandatory testing will probably be considered unlawful.

Because there is a fine line between using the test results in a disciplinary manner, as opposed to a safety-related manner, the school may want to establish a policy whereby a student is required to obtain a medical certificate from a physician attesting to the student's physical fitness to participate in sports. Any such exam would include drug testing. If the student fails the physical exam in any respect, including the drug screening, the student would not receive the certificate and could not participate. The school need not be informed of the reason(s) why the certificate was withheld. The physician would then take responsibility for notifying the student's parents and suggesting rehabilitation. (See sample certificate at Appendix 11)

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52. Bethel School Dist. v. Fraser, 106 S. Ct. 3159 (1986); *New Jersey v. T.L.O.*, 469 U.S. at 339-340.

53. *New Jersey v. T.L.O.*, 469 U.S. at 342.

H. The Need for a Reasoned and Personalized Approach

An Olde Iowa Hunter's Proverb eloquently states, "Do not go hunting rabbits with a machine gun." Likewise, any drug plan or policy should be tailored to the extent or nature of the problem. While it may not be necessary in every case to adopt a stringent policy, schools should establish a "threshold" policy as a prophylactic measure. After establishing a threshold policy, the school must assess the extent of the drug problem and tailor its policy accordingly. For example, if the school is particularly concerned about students in the chemistry lab or in drivers education who are "stoned" or "wired," the policy should be tailored to address these concerns.

Drug/Alcohol Abuse Policy Checklist

1. Do you have a clear, written, well-publicized policy on drug and alcohol abuse?

2. Has the school board given written guidelines on this issue to administrators/staff?

3. Have administrators/staff been trained to recognize key performance indicators often associated with drug and alcohol abuse?

4. Do administrators/staff know what to do if they find an employee/student who may be unfit for teaching/learning, under the influence of drugs or alcohol, or found in possession of an illicit or prohibited substance?

5. If drugs are found on school property, are local law enforcement officials promptly notified, and are procedures in place to accomplish this effectively?

6. Is there a medical resource designated for an examination including a urine test for employees/students suspected of violating the substance abuse policy?

7. Has the school board briefed the union, if applicable, on its drug policy and advised union representatives that safety at work and fitness for duty are standards that all employees will be expected to meet?

8. Have the employees/students submitted consent forms acknowledging and agreeing to personal searches and substance abuse testing upon reasonable suspicion a violation of school policy has occurred?

Appendices

Sample Policies, Notices and Forms

The following sample policies, notices, and forms are provided merely as guidelines. After establishing a threshold policy, each school district must assess the scope of its substance abuse problem and tailor its policies, notices, and forms to those particular problems faced by the district.

Appendix 1

Staff Drug and Alcohol Abuse Policy

Board of Education of _____ School District

I. Definitions

A. For the purposes of this Policy, these terms are defined as follows:

1. Alcohol—Any liquor, wine, beer or other beverage.

2. Alcoholism—A condition caused by the continued use of alcohol, lasting a considerable length of time and expected to limit the person's functional ability.

3. Chemical Dependency—A condition caused by the continued use of drugs, lasting a considerable length of time and expected to limit the person's functional ability.

4. Drugs—Any drug, including illegal drugs, marijuana, inhalents, legal prescription and over-the-counter drugs used or possessed or distributed for unauthorized purposes, and counterfeit (look-alike) controlled substances.

5. Substance Abuse—The use of drugs or alcohol in violation of state or federal law or in violation of school policy.

6. Under the Influence—Can be measured by the employee's impaired job performance resulting from substance abuse and/or an alcohol level of .05 or a positive urinalysis result.

   The particular quantities of alcohol or drugs used to determine if one is "under the influence" should be established in consultation with appropriate medical authorities or the medical laboratory conducting the testing.

II. Drug or Alcohol Use or Possession

A. The use, possession, or being under the influence of drugs or alcohol by anyone during the school day or on the school premises is absolutely prohibited. Violation of this rule by any employee will be cause for disciplinary action up to and including discharge.

B. In order to enforce these rules, the Board reserves the right to carry out personal searches of individuals and their property upon a reasonable suspicion that this policy has been violated.

C. Furthermore, the Board may, upon reasonable suspicion, require an employee to submit to certain tests designed to indicate the presence of drugs or alcohol in the employee's body fluids or breath.

D. For those individuals employed in a position whereby there is a public safety interest in insuring that the employee is not impaired by drug or alcohol use, the employee may be tested for evidence of drug or alcohol use upon any degree of suspicion by the Board.

III. Alcoholism and Chemical Dependency

A. The Board, upon a finding that an employee is an alcoholic or is chemically dependent on any drug, will not discipline that employee for his use of drugs or alcohol unless such use has affected such employee's job performance.

B. These rules in no way limit the Board's authority to discipline or discharge any employee who is an alcoholic or chemically dependent, where the employee's current use of alcohol or drugs affects the employee's qualifications for and performance of his job.

IV. Due Process

Any disciplinary action taken against an employee employed pursuant to a collective bargaining agreement for a violation of this policy will be subject to the grievance procedures set forth in the collective bargaining agreement. Any disciplinary action taken by the Board pursuant to this policy against a tenured employee who is not employed pursuant to a collective bargaining agreement may be formally appealed to the Board within 10 days. An employee bringing such an appeal will have the opportunity to offer evidence and cross-examine the witnesses and may have an attorney present at the hearing.

Appendix 2

Student Drug and Alcohol Abuse Policy

(for students who elect to participate in extracurricular activities)

Board of Education of _____ School District

I. Philosophy

Students have no absolute rights to participate in extracurricular student activities. Such participation is a privilege accorded to students that is encouraged by the Board of Education. To be eligible to participate, students must read, sign and comply with the provisions of this policy.

II. Definitions

The terms used in this policy are defined as follows:

A. Alcohol: Any liquor, wine, beer or other beverage containing alcohol.

B. Drugs: Any drug, including illegal drugs, marijuana, inhalents, legal prescription and over-the-counter drugs used or possessed or distributed for unauthorized purposes, counterfeit (look alike) substances and tobacco.

C. Drug Paraphernalia: Equipment or apparatus designed for or used for the purpose of measuring, packaging, distributing or facilitating the use of drugs.

D. Substance Abuse: The use of drugs or alcohol in violation of state or federal law or in violation of school policy.

III. Rules Regarding Alcohol and Drug Use

The Board forbids, while on school property and/or involved in school activities:

A. The use, possession and/or sale or distribution of drugs and/or drug paraphernalia in any manner (except as medically prescribed);

B. The possession of, distribution and/or drinking of alcoholic beverages.

IV. Penalties For Violations of Rules

All penalties for violations of the rules regarding alcohol and drug use will be in effect from the date on which a violation is determined.

A. Selling or distributing any drug or alcoholic beverage by students participating in extracurricular activities is prohibited.

1. First Offense: [Consequence]
2. Second Offense: [Consequence]

B. Possession or use of any drug or alcoholic beverage by students participating in extracurricular activities is prohibited.

1. First Offense: [Consequence]
2. Second Offense: [Consequence]

C. Possession or sale of drug paraphernalia by students participating in extracurricular activities is prohibited.

1. First Offense: [Consequence]
2. Second Offense: [Consequence]

V. Enforcement of Policy

A. Faculty members have the responsibility to report any offending student to the principal or other manager (administrator) having disciplinary authority over the student so this policy may be effectively implemented.

B. The _____ School District reserves the right to search a student's person or personal effects or to demand that the student submit to a drug test where there is reasonable suspicion that these rules have been violated.

VI. Due Process

A. *Initial Discipline*

Any participant in an extracurricular activity who is suspected of violating any of the above-mentioned rules shall be afforded the opportunity for a hearing with the advisor of the activity. The advisor shall present evidence of the violation and ask the student to respond to the charges. If the student is found to be in violation of the rules, the advisor, in accordance with the schedule set forth above, shall inform the student of the duration of the participation exclusion.

B. *Review Procedure*

Any student disciplined for violating any of the above-mentioned rules may within 10 days appeal the disciplinary measure of the Board of Education to ask questions and to present his/her version of the events which led to the discipline of the student in an attempt to have the disciplinary measure reversed.

I understand the Student Drug and Alcohol Policy of the Board of Education of the _____ School District, and I agree to the following contract:

I, _____ , will not use, possess, distribute or sell alcohol or drugs for the period from _____ to _____ . If I violate the Student Drug and Alcohol Policy, I agree to the penalties stated in this policy.

_____ Date: _____
(Student's Signature)

_____ Date: _____
(Parent's Signature)

_____ Date: _____
(Advisor's Signature)

Appendix 3

Student Athlete Drug Screening Release

In consideration for participation in [name of school's athletic program, related activities, and events], I _____, state as follows:

1. I agree to submit, at any time and as often as requested, a sample of my urine, or any other requested substance which may be used in testing for drugs, for chemical analysis whenever I am requested to do so by the school. This paragraph shall apply during any time I am a participant in, or seeking to participate in, a school or school-sponsored athletic program, activity or event. I understand that any analysis will be conducted by _____ or other competent testing organization by qualified laboratory personnel.
2. I understand that one of the purposes of this analysis is to determine the presence or absence of non-prescribed or prohibited controlled substances in my urine or other sample.
3. I realize that my urine or other sample submitted and the results, in whatever form, of all tests, of whatever nature, performed on such urine are the property of _____ School District.
4. I consent to release of the results of such tests, but not including my name or other identifying information, to any person and this document shall constitute a permanent written consent to any such release of such results.
5. I consent to the release of the test results to authorized school administrators and/or athletic supervisor(s) and I agree to release _____ or any other testing laboratory, its employees, agents, and contractors from any and all liability whatsoever arising from matters covered in this release, including but not limited to requests to release samples, the testing of the samples, the release of results to any person, and the decisions made concerning my ability or suitability for participation in any school or school-sponsored athletic program, activity, or event.
6. I understand that a documented chain of specimen custody exists to ensure the identity and integrity of my sample throughout the collection and testing process.
7. I understand that I may be suspended from participation in any school or school-sponsored athletic program, activity, or event in accordance with the penalties set forth below if the results of any tests reveal the presence of non-prescribed or prohibited con-

trolled substances in my urine or other sample, or reveal any signs of improper drug use.

Penalties for Violations of Rules

All penalties for violations of the rules regarding alcohol and drug use will be in effect from the date on which a violation is determined.

A. Selling or distributing any drug or alcoholic beverage by students participating in any athletic programs, activity, or event is prohibited.

   1. First Offense: [Consequence]
   2. Second Offense: [Consequence]

B. Possession or use of any drug or alcoholic beverage by students participating in any athletic program, activity, or event is prohibited.

   1. First Offense: [Consequence]
   2. Second Offense: [Consequence]

C. Possession or sale of drug paraphernalia by students participating in any athletic program, activity or event is prohibited.

   1. First Offense: [Consequence]
   2. Second Offense: [Consequence]

I state that I have read this agreement, that I understand and agree with its terms, and that I sign this voluntarily.

Dated this _____ day of _____, 19 ____.

_____ Date: _____
(Student's Signature)

_____ Date: _____
(Parent's Signature)

_____ Date: _____
(Advisor's Signature)

Appendix 4

Personal Searches of Students/Staff

A student's or employee's person and/or personal effects (e.g., purse, book bag, etc.) may be searched whenever a school official has reasonable suspicion to believe that the student or employee is in possession of illegal or unauthorized materials.

If a pat down search of a student or employee is conducted, it will be conducted in private by a school official of the same sex and with a witness present.

If extreme emergency conditions require a more intrusive personal search, such a search may only be conducted in private by a school official of the same sex, with a witness of the same sex present, and only upon the prior approval of the Superintendent, unless the health or safety of students or employees will be endangered by the delay which might be caused by following these procedures.

Appendix 5

Locker and Desk Searches

Lockers and desks are school property and remain at all times under the control of the school; however, students and employees are expected to assume full responsibility for the security of their lockers and desks. Periodic general inspections of lockers and desks may be conducted by authorized school officials for any reason at any time without notice, without consent, and without a search warrant.

Appendix 6

Automobile Searches

Students and employees are permitted to park on school premises as a matter of privilege, not of right. The school retains the authority to conduct routine patrols of school parking lots and inspections of the exteriors of automobiles on school property. The interiors of vehicles on school property may be inspected whenever an authorized school official has reasonable suspicion to believe that illegal or unauthorized materials are contained inside. Such patrols and inspections may be conducted without notice, without consent, and without a search warrant.

Appendix 7
Use of Dogs

The administration is authorized to utilize dogs whose reliability and accuracy for sniffing out contraband has been established to aid in the search for contraband in school owned property and automobiles parked on school property. Dogs shall not be used to search students or employees unless school officials have established independently that there is reasonable suspicion to believe the student or employee possesses contraband on his or her person. The dogs must be accompanied by a qualified and authorized trainer who will be responsible for the dog's actions. An indication by the dog that contraband is present on school property or in an automobile on school property shall be reasonable cause for a further search by school officials.

Appendix 8
Bulletin Board Notice

Upon reasonable suspicion that a violation of the school's substance abuse policy has occurred, authorized school officials may inspect anyone entering, on, or leaving school property, including school employees, employees of contractors or their subcontractors or agents doing business with the school, and others such as visitors and guests.

Entry onto school property is deemed consent to an inspection of person, vehicle, and personal effects. If you do not consent to inspection, please do not enter or remain on the property.

The use, possession, sale, transfer or purchase of illegal drugs is not allowed on school property. When appropriate, items violating this policy found in the course of an inspection will be taken into custody and may be turned over to appropriate law enforcement agencies.

Appendix 9

Sign Sample

Entry onto school property is deemed consent to an inspection of person, vehicle, and personal effects at any time while entering, on, or leaving the property. Inspections will be conducted upon reasonable suspicion of the use, possession or sale of alcohol/drugs on school property.

Appendix 10

Guidelines To Employing Appropriate Methodologies

1. Selection of valid testing procedures
2. Obtaining of informed or at least implied consent
3. Identification of the specimen as to its source
4. Handling of same with diligence and care (chain of custody); use of evidence tape to seal
5. Involvement of reputable laboratories
   a. willing to assist in specimen collection/handling
   b. internal chain of custody
   c. quality control for accuracy/verification
   d. use of confirmation testing
   e. provision for frozen storage of positive samples and retesting if the need arises
   f. notification of results within reasonable period of time

g. **experience/willingness to defend test in court or arbitration**

h. **competitively priced**

i. **referrals from other customers**

6. **Discretion of interpretation of results**
7. **Consideration of whether behavioral evidence corroborates findings**

Appendix 11

Physician's Certification of Physical Fitness

I, [physician's name] hereby certify that I have completed a physical examination of [student's name], including screening for the use of drugs and alcohol. Based upon such examination, it is my opinion that [student's name] [is] [is not] physically fit to participate in [name of school] athletic program.

_____

(physician's signature)

_____

(date)

Appendix 12

Consent Form for Pre-Employment Alcohol, Drug and Substance Screening

I hereby give my consent to The Board of Education of _____

_____ School District to collect urine samples

from me and to conduct other necessary medical tests to determine the presence or use of alcohol, drugs, or controlled substances. Further, I give my consent for the release of the test results and other relevant medical information to authorized school administrators and the Board of Education for appropriate review. I also understand that a confirmed finding of the presence or use of alcohol or drugs or my refusal to consent may result in denial of employment. I further agree to notify school administrators about the use of any mood altering drug prescribed by my physician.

I have taken within the last 30 days or am taking the following medications:

Name of Prescription	Condition for which taken	Physician
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

AGREED TO:

_____

Signature Date

_____

Witness Date

REFUSED:

_____

Signature Date

_____

Witness Date

Reasons for Refusal: _____

_____

_____

Appendix 13

Consent Form for Alcohol, Drug and Substance Testing

I hereby give my consent to The Board of Education of _____

_____ School District to collect urine samples

from me and to conduct other necessary medical tests to determine the presence or use of alcohol, drugs, or controlled substances. Further, I give my consent for the release of the test results and other relevant medical information to authorized school administrators and the Board of Education for appropriate review. I also understand that a confirmed finding of the presence or use of alcohol or drugs may subject me to disciplinary action, including termination of employment. I further agree to notify school administrators about the use of any mood altering drug prescribed by my physician.

I have taken within the last 30 days or am taking the following medications:

Name of Prescription	Condition for which taken	Physician
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

AGREED TO:

_____

Signature Date

_____

Witness Date

REFUSED:

_____

Signature Date

_____

Witness Date

Reasons for Refusal: _____

_____

_____

Glossary

In order to effectively use and understand this Manual, and in order to adopt policies to combat drug and alcohol use, it is helpful to define a number of terms.

A. ***Alcohol:*** The active ingredient found in alcoholic liquors, wine and beer, and any other form thereof.

B. ***Chain of Custody:*** The procedure by which analytical results remain secure. Chain of custody begins with urine collection, sometimes directly observed by medical or security personnel, and continues through the reporting of test results to clients. Sealing of sample containers, transport and control of samples, receipt of samples by the laboratory, and supervision of lab tests should remain under strict discipline throughout the chain of custody. Authorized signatures are required at each step. Laboratory results can be effectively challenged if there are weak links in the chain.

C. ***Confirmation:*** All urine samples reported positive should be analyzed by at least two different methods. Both tests must give a positive result before a positive report is made. This process is called confirmation.

D. ***Detection Period:*** The length of time a drug or metabolite can be found in bodily fluids is known as the detection period. Detection periods vary widely according to the inherent physical/chemical properties of the drug itself, use history of the person being tested and user characteristics such as age, sex, body weight and health. Cocaine's detection period is very short (12 to 48 hours) while marijuana has a wide-ranging detection period depending primarily on drug use history. Casual use can be detected from two to seven days while chronic use detection may extend to a month or longer.

E. ***Drug:*** Any drug, including illegal chemical substances, marijuana, over-the-counter drugs and prescription drugs used or possessed in an unauthorized manner, inhalents, tobacco and counterfeit controlled substances.

F. ***Drug Urinalysis:*** An analytical tool for determining the presence of drugs in urine.

G. ***Immunoassay (EMIT):*** Enzyme Multiplied Immunoassay Technique (EMIT) kits are among the most common immunoassays used to detect drugs and their metabolites in bodily fluids. Drug-specific antibodies are developed from laboratory animals to distinguish between positive and negative samples. The use of immunoassays has become commonplace and they have emerged as the major method for detecting marijuana.

H. ***Pre-Employment Screens:*** A process which requires job applicants to submit to drug or alcohol tests prior to employment.

I. ***Sensitivity/Specificity:*** A measure of the minimum amount of drug that can be detected in a urine sample. Specificity is the ability to distinguish one drug from another.

J. ***Substance Abuse:*** The unauthorized use of any drugs or alcohol, or the use of medically prescribed or over-the-counter drugs.